

RECEIVED

DOCKET FILE COPY ORIGINAL

SEP 23 1997

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Regulatory Treatment of LEC Provision) CC Docket No. 96-149
of Interexchange Services Originating in the)
LEC's Local Exchange Area)
)
and)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)

**REPLY OF ANCHORAGE TELEPHONE UTILITY
TO OPPOSITIONS TO PETITION FOR RECONSIDERATION**

As stated by the Commission, the purpose of the Telecommunications Act of 1996 ("the 1996 Act") is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."^{1/} This mandate of the 1996 Act requires that the Commission impose new regulatory restraints on telecommunications providers only if those restraints are necessary to protect consumers and promote competition. Neither the Commission nor the parties opposing ATU's Petition for Reconsideration have demonstrated that requiring independent LECs to offer in-region, interstate, interexchange services through a separate legal entity is necessary to protect

^{1/} See, e.g., Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, para. 1 (released April 18, 1997) ("Second Report and Order").

No. of Copies rec'd
List ABCDE

2411

consumers or to promote competition. Further, the parties opposing ATU's Petition have not demonstrated any adverse impact on the public or competition if the Commission presumptively sunsets the Competitive Carrier Fifth Report and Order requirements and implements a streamlined waiver procedure for independent LECs facing competition in their local exchange area.

I.

In its Second Report and Order, the Commission required independent LECs to provide in-region, interstate, interexchange services through a separate legal entity and comply with the Competitive Carrier Fifth Report and Order separations requirements.^{2/} ATU's Petition seeks reconsideration of the requirement that independent LECs must provide in-region, interexchange services through a separate legal entity; ATU has not requested that the Commission modify the Competitive Carrier Fifth Report and Order separations requirements.

The Commission imposed the Competitive Carrier Fifth Report and Order separations requirements on independent LECs' provision of in-region, long distance services to guard against cost misallocation, unlawful discrimination or a price squeeze.^{3/} As the Commission explained, requiring separate books of account allows the

^{2/} Pursuant to the Competitive Carrier Fifth Report and Order separations requirements, independent LECs must (1) maintain separate books of account for their in-region, long distance affiliate, (2) not jointly own transmission or switching facilities with their long distance affiliate, and (3) provide all tariffed services to the long distance affiliate at the tariffed rates.

^{3/} See Second Report and Order, para. 163.

Commission "to trace and document improper allocations of costs or assets."^{4/} Further, the prohibition on jointly owned facilities "reduce[s] the risk of improper cost allocations of common facilities between the independent LEC and its exchange affiliate" and deters "discrimination in access to the LEC's transmission and switching facilities by requiring the affiliates to follow the same procedures as competing interexchange carriers to obtain access to those facilities."^{5/} Finally, requiring the affiliates to take tariffed services at tariffed rates or pursuant to negotiated interconnection agreements "aids in preventing a LEC from discriminating in favor of its long distance affiliate" and reduces the risk of a price squeeze.^{6/}

These protections provided by the Competitive Carrier Fifth Report and Order separations requirements can be fully realized without requiring that the long distance affiliate be a separate legal entity. The long distance affiliate can operate as a division of the LEC and maintain separate books of account that will allow the Commission to trace and document any improper cost allocations.^{7/} Further, to comply

^{4/} Id.

^{5/} Id.

^{6/} Id.

^{7/} Contrary to GCI's contention, ATU is required to file its Cost Allocation Manual with the Commission and to audit its cost allocation procedures. Implementation of the Telecommunications Act of 1996; Reform of Filing Requirements and Carrier Classification; Anchorage Telephone Utility, Petition for Withdrawal of Cost Allocation Manual, CC Docket No. 96-193, Report and Order, FCC 97-145, para. 74 (released May 20, 1997). ATU's Cost Allocation Manual was filed with the Commission and placed on public notice. See Carriers File Revisions To Their Cost Allocation Manuals Public Comment Invited, Public Notice, 12 FCC Rcd 4708 (released April 11, 1997). No comments were filed. GCI surely would have filed comments with the Commission if it had any real concerns regarding ATU's cost allocation procedures.

with the prohibition on joint ownership of transmission or switching facilities, no costs associated with those facilities would be allocated to the long distance division.

Moreover, as a practical matter, the joint ownership restriction is unnecessary as virtually every independent LEC offering long distance service is doing so on a resale basis.

Finally, the long distance division would be required to obtain access to the LECs' tariffed services at tariffed rates. In sum, neither the Commission nor the parties opposing ATU's Petition have justified requiring LECs to provide in-region, long distance services through a separate legal entity.^{8/} Accordingly, pursuant to the de-regulatory mandate of the 1996 Act, the Commission may not impose this unnecessary regulatory burden on independent LECs.

II.

ATU's Petition for Reconsideration urges the Commission to sunset the Competitive Carrier Fifth Report and Order separations requirements on April 18, 2000, (i.e., three years after the adoption of the Second Report and Order) unless the Commission affirmatively finds, through a notice and comment rulemaking proceeding, that an extension is required to serve the public interest and the goals of the 1996 Act. Again, ATU's proposal is fully in keeping the de-regulatory mandate of the 1996 Act. Indeed, it parallels the sunset provision of the separations requirements imposed on the

^{8/} Indeed, MCI is the only party that even attempts to justify the requirement that independent LECs provide long distance service through a separate legal entity. MCI contends that "accounting separation is more effective where legal separation is also required, since it makes joint and shared costs, and the allocation thereof, more visible." Opposition of MCI at 17. So long as the long distance affiliate maintains separate books of account, the allocation of joint and common costs will be fully visible. Nothing is added by requiring that the affiliate also be a separate legal entity.

provision of in-region, interstate, interexchange services by Bell Operating Companies ("BOCs") in the 1996 Act.

The parties opposing ATU's petition offer little to justify indefinite perpetuation of the Competitive Carrier Fifth Report and Order separations requirements. The Telecommunications Resellers Association merely finds the proposal to sunset the separations requirements in three years to be "unwise."^{9/} MCI recognizes that it would be incongruous for the smaller, less powerful independent LECs to continue to be subject to separations requirements for their in-region, long distance services after the BOCs have been relieved of their separations requirements, but nonetheless opposes a sunset provision for independent LECs that parallels the sunset provision in Section 272(f).^{10/} GCI contends that a sunset provision like that in Section 272(f) is not appropriate for independent LECs because they, unlike the BOCs, do not have to comply with the Section 271 checklist.^{11/} Yet GCI also ignores the Commission's finding that "independent LECs are less likely to be able to engage in anticompetitive conduct than the BOCS," which removes the need to impose additional requirements like those in Section 271.^{12/}

^{9/} Comments of Telecommunications Resellers Association at 8-9.

^{10/} Opposition of MCI at 18.

^{11/} Opposition of GCI at 4-5.

^{12/} See Second Report and Order at para. 170.

In keeping with the de-regulatory purpose of the 1996 Act, Congress established a sunset period for the BOCs' Section 272 separations requirements.^{13/} Although Congress could not "magically anticipate that competition will occur"^{14/} within the three-year time period established in Section 272(f), it nonetheless concluded that the presumption should be in favor of deregulation. Accordingly, at the conclusion of a three-year period, the BOCs' separations requirements terminate unless the Commission affirmatively extends them. To adopt the opposite approach for independent LECs -- that is, to maintain indefinitely their separations requirements until affirmatively terminated by the Commission -- is flatly inconsistent with the 1996 Act.

III.

None of the parties opposing ATU's Petition quarrels with the fact that the Competitive Carrier Fifth Report and Order separations requirements should be promptly removed once an independent LEC faces competition in the local exchange market. Nonetheless, they oppose ATU's proposed streamlined waiver procedure. The reason for their opposition is clear -- they recognize that as long as independent LECs are subject to these separations requirements, the LECs' ability to compete will be hindered. As GCI acknowledges in its opposition, the Commission's workload will make it unlikely that the Commission can address waiver petitions on a timely basis.^{15/}

^{13/} See 47 U.S.C. § 272(f).

^{14/} See Opposition of GCI at 4.

^{15/} Opposition of GCI at 5-6.

The opposing parties' position cannot be reconciled with the de-regulatory mandate of the 1996 Act. Independent LECs facing competition in their local exchange markets must have available to them a procedure whereby they can be promptly relieved of the Competitive Carrier Fifth Report and Order separations requirement. The Commission's waiver procedure in Section 1.3 of its rules and the forbearance procedure in Section 10 of the Communications Act do not ensure that prompt relief or assure that the Commission's own processes will not be used to stifle full and fair competition. Under either procedure, relief could be delayed for over a year.^{16/}

Conclusion

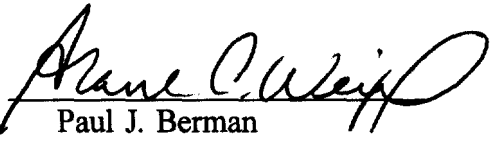
For the reasons discussed above and in ATU's Petition for Reconsideration, the Commission, on reconsideration, should (1) remove the requirement that independent LECs provide interstate and international interexchange services through a separate, legal entity; (2) sunset the Competitive Carrier Fifth Report and Order separations requirements

^{16/} See 47 U.S.C. § 10(c).

in three years; and (3) adopt a streamlined waiver procedure to remove promptly these separations requirements for LECs facing competition in their local exchange markets.

Respectfully submitted,

ANCHORAGE TELEPHONE UTILITY

By 
Paul J. Berman
Alane C. Weixel
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-6000

Its Attorneys

September 23, 1997

CERTIFICATE OF SERVICE

I certify that on September 23, 1997, I caused a copy of the foregoing
"Reply of Anchorage Telephone Utility To Oppositions To Petition For Reconsideration"
to be sent via first class mail, postage prepaid, to the following:

Kathy L. Shobert
Director, Federal Affairs
General Communication, Inc.
901 15th Street, N.W.
Suite 900
Washington, D.C. 20005

Mark C. Rosenblum, Esq.
Leonard J. Cali, Esq.
James H. Bolin, Jr., Esq.
AT&T Corp.
295 North Maple Avenue
Room 3247H3
Basking Ridge, NJ 07920

Edward Shakin, Esq.
Bell Atlantic Long Distance Carriers
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Durward D. Dupre, Esq.
Mary W. Marks, Esq.
SBC Communications, Inc.
One Bell Center
Room 3536
St. Louis, MO 63101

Nicholas W. Allard, Esq.
Michale S. Wroblewski, Esq.
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004

Frank W. Krogh, Esq.
Mary L. Brown, Esq.
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Charles C. Hunter, Esq.
Catherine M. Hannan, Esq.
Hunter Telecommunications
Law Group
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006

Robert M. Lynch, Esq.
SBC Communications, Inc.
175 E. Houston
San Antonio, TX 78205

David W. Zesiger, Esq.
Independent Telephone &
Telecommunications Alliance
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036


Alane C. Weixel